IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 2426 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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GUJARAT STATE ROAD TRANSPORT CORPORATION - Petitioner(s)

Versus

MAHMED YUNUS SULTAN BHAYANI - Respondent(s)

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Appearance :

MR ASHISH M DAGLI for Petitioner(s) : 1,
MR KISHOR M PAUL for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 24/08/2005

ORAL JUDGMENT

Rule. In this petition under Article 226/227 of the Constitution of India, the petitioner, Gujarat State Road Transport Corporation has challenged the legality and validity of the judgment and award passed by the Industrial Tribunal, Rajkot dated 27.5.2004 in Reference (IT) No. 199 of 1999 in

partly allowing the said Reference and by quashing and setting aside the order of punishment imposed by the disciplinary authority of withholding 5 increments with permanent future effect, however, not granting any backwages and/or difference of salary.

2. The respondent workman was serving as a driver in the petitioner Corporation and a departmental enquiry was initiated against him alleging inter alia that when he was on duty on 7.8.1986 on Rajkot-Mangrol road at the time when his bus was near the Railway crossing his bus dashed with one cyclist and on account of that he received injuries and ultimately succumbed to the same. On conclusion of the departmental enquiry and holding the charge and misconduct proved against him, the disciplinary authority vide order dated 17.10.1988 imposed the punishment of putting the respondent workman to the minimum of the pay-scale. It appears from the record that being aggrieved and dissatisfied with the order of punishment imposed by the disciplinary authority the respondent workman preferred departmental appeal and in the said appeal the appellate authority substituted the order of punishment by withholding of 5 increments with future permanent effect. Being aggrieved and dissatisfied with the order passed by the appellate authority of withholding 5 increments with permanent future effect, the respondent workman raised industrial dispute which was referred to the Industrial

Tribunal, Rajkot for adjudication being Reference (IT) No. 199 of 1999. Considering the finding given by the Enquiry Officer and the Report of the Reporter, and on appreciation of evidence the Tribunal while observing that the accident had taken place due to circumstances beyond control of the respondent workman and it can be termed as only negligence, has held that the punishment imposed by the disciplinary authority is too harsh and disproportionate to the charge and misconduct proved against him and therefore quashed and set aside the order of punishment imposed by the first appellate authority of withholding of 5 increments with permanent future effect. However, considering some lapse on the part of the respondent workman the Tribunal passed an order not to pay any monetary benefits for the interregnum period and/or difference of salary, but directed to consider the same notionally on quashing and setting aside the order of punishment imposed by the first appellate authority. Being aggrieved and dissatisfied with the judgment and award passed by the Industrial Tribunal dated 27.5.2004 in Reference (IT) No. 199 of 1999, the petitioner Corporation has preferred the present Special Civil Application under Article 226/227 of the Constitution of India.

3. Shri Ashish M. Dagli, learned advocate appearing for the petitioner has vehemently submitted that considering the fact the cyclist has died due to the accident and that the Corporation was saddled with the

liability of payment of Rs. 56,200 plus interest in all totalling Rs. 70,499/- and the said amount is paid by the Corporation and therefore in such serious nature of misconduct committed by the respondent during the course of employment the Industrial Tribunal ought not to have interfered with the punishment imposed by the competent authority. He has further submitted that on seeing cattles on the road from a distance it was the duty of the respondent workman to slow down the bus and under the circumstances the Industrial Tribunal has materially erred in interfering with the order of punishment imposed by the first appellate authority. He has also further submitted that though the Industrial Tribunal has held that the punishment imposed by the appellate authority is disproportionate to the charge and misconduct proved against him, the Industrial Tribunal has not imposed any other punishment and therefore it is requested to allow the present Special Civil Application.

4. Per contra, Shri Kishor M. Paul, learned advocate appearing on behalf of the respondent workman has supported the judgment and award passed by the Industrial Tribunal. He has further submitted that on appreciation of evidence and considering even the finding of the Enquiry Officer to the effect that as per the Reporter and as per T-5 remarks, at the place of accident there were many stray cattles on the road due to which the driver was required to take his bus on the wrong side and he had tried to avoid the accident by applying brake and had tried to control the bus and therefore it is rightly held by

the Tribunal that considering the aforesaid facts and circumstances the punishment of withholding of 5 increments with permanent future effect is too harsh and disproportionate to the charge and misconduct alleged against him. He has further submitted that denial of any backwages and/or monetary benefit on quashing and setting aside the order of punishment imposed by the appellate authority for the interregnum period is sufficient punishment and it cannot be said that no punishment has been imposed by the Industrial Tribunal. It is therefore requested to dismiss the present Special Civil Application.

5. Heard the learned advocates appearing on behalf of the parties. It is true, that in the vehicular accident one cyclist received injuries after dashing with the bus and ultimately he succumbed to the injuries. However, one has to consider the circumstances under which the accident had taken place. Even as per the Reporter and the finding of the Enquiry Officer, and as per the T-5 Remarks, at the place of the accident there were many stray cattles/cows on the road due to which the respondent workman driver was required to take his bus on the wrong side and he had tried to control the situation by applying the brake in order to avoid the accident. However, in the said exercise one cyclist dashed with the bus. Considering the aforesaid facts and circumstances, it cannot be said that the respondent bus-driver was rash and negligent in driving the bus and responsible for the accident. The contention on behalf of the petitioner,

that on seeing the cattles on the road from a distance the respondent-workman was supposed to slow down his bus and/or reduce the speed which was not done by him and as such he was found to be rash and negligent, cannot be accepted. The Tribunal, on appreciation of evidence and considering the finding given by the Enquiry Officer and the Reporter as stated hereinabove, has come to the conclusion that the punishment of withholding of 5 increments with permanent future effect in the above circumstances and the charges and misconduct proved against him is disproportionate and too harsh. Such a finding, which is based upon appreciation of evidence and exercise of powers under Section 11-A of the I.D. Act is not required to be interfered with by this Court in exercise of powers under Articles 226/227 of the Constitution, more particularly when the finding given by the Industrial Tribunal is neither perverse nor illegal. The contention on behalf of the petitioner that no other punishment is imposed by the Tribunal also cannot be accepted, as the respondent-workmen is denied the monetary benefits for the interregnum period which were available to him on quashing and setting aside the order. Considering the above facts and circumstances, it cannot be said that the judgment and award passed by the Industrial Tribunal is illegal and/or perverse and/or the Industrial Tribunal has exceeded in its jurisdiction and therefore there is no substance in the present petition.

6. For the reasons stated hereinabove, the petition fails. The Judgment and Award passed by the Industrial Tribunal dated 27.5.2004 in Reference (IT) No. 199 of 1999, is hereby confirmed. Rule is discharged, however, there will be no order as to costs.

[M.R. Shah, J.]

RMR.